UNITED NATIONS

E/NL. 1992/1-2

12 May 1992

ENGLISH ONLY*

LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.

NETHERLANDS ANTILLES

Communicated by the Government of the Netherlands

NOTE BY THE SECRETARIAT

(a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.

(b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

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* Note by the Secretariat: The present document is a direct reproduction of the texts communicated to the Secretariat.

V.92-54128

OFFICIAL GAZETTE No. 94

NATIONAL ORDINANCE of December 22nd 1989 to amend the Opium National Ordinance 1960 (Official Gazette 1960, no. 65) and the Criminal Code of the Netherlands Antilles.

IN THE NAME OF THE QUEEN !

THE GOVERNOR of the Netherlands Antilles,

Whereas:
it is expedient further to amend the Opium National Ordinance 1960 (O.G. 1960, no. 65), as amended, the last time by National Ordinance of July 17th 1986 (O.G. 1986, no. 88)1/, as also the Criminal Code;

Now, therefore, We have thought fit, by and with the advice of the Advisory Council and in consultation with Parliament, to lay down the following national ordinance:

Article I

The Opium National Ordinance 1960 (O.G. 1960, no. 65), shall be further amended as follows:

A. Article 10, fifth paragraph shall be replaced by:
5. The said officials shall have the authority to search the body and clothing of a person suspected of violation of the acts held to be punishable by or in pursuance of this national ordinance, when there are serious complaints against such person.

B. Article 11, first paragraph shall be replaced by:
1. Any one who acts in contravention of article 2, article 3 first paragraph, article 4 first paragraph or article 5, or of a rule laid down in pursuance of article 4 third paragraph, or of a condition or regulation, laid down in pursuance of articles 6, 7 or 8, shall be punished:
a. if he wilfully committed the act:
1. either with imprisonment for life,
2. or with temporary imprisonment of up to twenty years,
3. or with a money fine of up to five million guilders or in substitution thereof imprisonment for the duration of up to eighteen months,
4. or with both the punishments referred to in sub-paragraphs 2. and 3.;
b. in all other cases:
1. either with imprisonment of up to four years,

1/Note by the Secretariat: E/NL.1980/134; E/NL.1985/9; E/NL.1985/15; E/NL.1986/26

2. or with a money fine of up to one million guilders,
3. or with both the punishments referred to in sub-paragraphs 1. and 2.

C. Following article 11, four new articles shall be inserted, numbered, and reading as follows:

Article 11a

Any one who, to prepare or promote an act referred to in article 3 first paragraph, subparagraph A, B or D, in so far as wilfully committed, or article 4 first paragraph, subparagraph A, in so far as wilfully committed:

a. attempts to induce another person to commit such act, to cause same to be committed, to join in committing same or to provoke same, to render assistance in connection with same or to provide the opportunity, means or information for the purpose,
b. attempts to provide for himself or for another person the opportunity, means or information for committing the said act,
c. has at his disposal objects concerning which he is aware or has serious reason to suspect that same are intended for committing the said act, shall be punished either with imprisonment of up to twelve years, or with a money fine of up to one million guilders, or with both the punishments.

Article 11b

1. Anyone who wilfully purchases, hires, trades in, takes in pledge, accepts as a gift, or sells for gainful purposes, lets out for hire, exchanges, gives as a pledge, transports, keeps or conceals any object which has been acquired by a crime held to be punishable in this national ordinance, shall be punished either with imprisonment of up to twelve years, or with a money fine of up to one million guilders, or with both the punishments.
2. The same punishment shall be imposed on the person who wilfully benefits from the proceeds of any object as referred to in the first paragraph.

Article 11c

1. Anyone who purchases, hires, trades in, takes in pledge accepts as a gift or sells for gainful purposes, lets out for hire, exchanges, gives as a pledge, transports, keeps or conceals any object, shall be punished, if it is through his fault that his act concerns an object acquired through a crime held to be punishable in this national ordinance, with either imprisonment of up to four years, or with a money fine of up to two hundred and fifty thousand guilders, or with both the punishments.
2. The same punishment shall be imposed on the person who

benefits from the proceeds of any object, if it is through his fault that his act concerns an object acquired through a crime held to be punishable in this national ordinance.

Article 11d

For the application of articles 11 a through c, objects shall be held to include vehicles and vessels, substances, moneys or other means of payment and debt-claims.

D. Article 14 shall be amended as follows:

1. A sentence shall be added to the first paragraph, reading as follows:
   The acts held to be punishable in articles 11 a through c shall be held to be criminal offences.
2. A new paragraph shall be added, numbered, and reading as follows:
   3. The criminal law of the Netherlands Antilles shall be applicable to any one who, outside the Netherlands Antilles:
      a. commits any one of the acts held to be punishable in article 11 in so far as same are committed in order to wilfully prepare or promote acts in contravention of article 3 first paragraph, sub-paragraph A, or article 4 first paragraph, sub-paragraph A, or
      b. makes an attempt at, or takes part in, wilfully acting in contravention of article 3 first paragraph, sub-paragraph A, or article 4 first paragraph, sub-paragraph A.

Article II

The Criminal Code of the Netherlands Antilles shall be amended as follows:

A. Articles 35 and 36 shall be superseded by four articles, reading as follows:

Article 35

1. Liable to confiscation shall be:
   a. objects belonging to the convicted person and claims acquired in whole or largely by means of or from the benefits of the punishable act;
   b. objects in relation to which the act has been committed;
   c. objects with the aid of which the act has been committed or prepared;
   d. objects with the aid of which the detecting of the crime has been obstructed;
   e. objects which were manufactured or intended for committing the crime.

2. Objects as referred to in the first paragraph, subparagraphs b through e, if they should belong to a person other than the convicted one, shall be confiscated only if such other person was aware of the use made of such objects in connection with the act, or reasonably could have suspected such use.

Article 35a

When an object is confiscated, the packing in which it is placed shall thereby be included, unless the contrary is ruled by the judge.

Article 35b

1. When objects are confiscated, in the case that the confiscated objects should produce more than an amount fixed in the judgement, the judge may order that the difference be paid.
2. The judge shall allow a payment as referred to in the first paragraph, or a monetary compensation should this be necessary in order to preclude the disproportionate suffering by the convicted or any other person to whom the confiscated objects belong.
3. The judge shall determine to whom the amount of the payment or compensation shall be paid out; and this shall leave everyone's right to such amount intact.

Article 36

1. Objects which are not seized, shall be valued on confiscation at a specific monetary amount in the judgement.
2. In such case the objects shall be surrendered, or the estimated value shall be paid.
3. Article 27, third through fifth and seventh through ninth paragraphs, shall apply analogously in so far as necessary.

B. The designation of article 35bis shall be amended to article 36a; the designation of article 36bis shall be amended to article 36b. Both these articles shall be placed after article 36.

C. Following title II, a new title shall be inserted, reading as follows:

TITLE IIA

WITHDRAWAL FROM TRAFFIC AND DEPRIVATION OF BENEFIT UNLAWFULLY ACQUIRED.

Article 38a

All charges in connection with the implementation of the measures referred to in this title shall be borne by, everything acquired through such implementation shall accrue to, the Central Government.

Article 38b

1. Withdrawal from traffic of the objects seized may be pronounced:
   a. by decision of the court, whereby someone is convicted by reason of a punishable act;
   b. by decision of the court, whereby, acquittal or discharge from all prosecution notwithstanding, it is established that a punishable act has been committed;
   c. by a separate judicial decision at the requisition of the public prosecutor.
2. Articles 35a and 35b, second and third paragraphs, shall be analogously applicable.
3. The public prosecutor may appeal to the Court of Appeals within three days against a decision in respect of the first paragraph, whereby the requisition has not been granted, and this in the manner as provided by article 218 of the Criminal Procedure Code of the Netherlands Antilles.
4. The measure of withdrawal from traffic may be imposed in conjunction with punishments and other measures.

Article 38c

Liable to withdrawal from traffic shall be all objects:
a. which have been acquired wholly or largely by means of or from the benefits of the act;
b. with relation to which the act has been committed;
c. with the aid of which the act has been committed or prepared;
d. with the aid of which detection of the crime has been obstructed;
e. which were manufactured or intended for committing the crime;

all this in so far as their nature is such, that the uncontrolled possession thereof is in contravention of the law or of public interest.

Article 38d

Liable to withdrawal from traffic shall moreover be the objects, belonging to the perpetrator or suspect, the nature of which is such that the uncontrolled possession thereof is in contravention of the law or of public interest, which objects were found on investigation into the crime committed by him, or the crime of which he is suspected, but only if the objects can serve to commit or prepare similar crimes, or to obstruct the detection thereof.

Article 38e

1. In case of a decision of the court, whereby a person is convicted by reason of a punishable act, the obligation may be imposed on him to pay to the Central Government an amount of money for deprivation of the estimated benefit which he acquired by means of or through such punishable act. The saving of expense shall be reckoned

a benefit.

2. The judge may fix the amount of money at less than the estimated benefit.
3. The measure may be imposed in conjunction with punishments and with other measures.
4. Article 27, third through fifth and seventh through ninth paragraphs, shall apply analogously, to the extent necessary.

Article III

This national ordinance shall take effect as and from the day following that of publication of the Official Gazette, in which the proclamation took place.

Given at Willemstad, December 22 1989
R.A. ROMER

The Minister of Public Health
and Environmental Protection,
L.C. GUMBS

The Minister of Justice,
W.J. KNOPPEL

Issued on December 29th 1989
The Minister of General Affairs a.i.,
W.J. KNOPPEL

MINISTERIAL DECREE of July 23 1990 pursuant to article 3, first paragraph under g of the Opium National Ordinance 1960 (O.G. 1960, no. 65) as amended.

THE MINISTER OF PUBLIC HEALTH
AND ENVIRONMENTAL HYGIENE:

Having regard to:

Article 3, paragraph 1 under g of the Opium National Ordinance 1960 (O.G. 1960, no. 65), as amended; 1/

H A S R E S O L V E D :

Article 1

To designate as a narcotic drug, referred to in article 3, first paragraph under g of the Opium National Ordinance 1960 (O.G. 1960, no. 65):

alpha-methylthiofentanyl	: (N-[1-[1-methyl-2-(2-thienyl)ethyl]-4-piperidyl]propionanilide);
para-fluorofentanyl	: (4'-fluoro-N-(1-phenethyl-4-piperidyl)propionanilide);
beta-hydroxyfentanyl	: (N-[1-(beta-hydroxyphenethyl)-4-piperidyl]propionanilide);
beta-hydroxy-3-methyl-fentanyl	: (N-[1-(beta-hydroxyphenethyl)-3-methyl-4-piperidyl]-propionanilide);
thiofentanyl	: (N-[1-[2-(2-thienyl)ethyl]-4-piperidyl]propionanilide);
3-methylthiofentanyl	: (N-[3-methyl-1-[2-(2-thienyl)ethyl]-4-piperidyl]propionanilide);
N-hydroxy MDA	: 1. N-OH-MDA, 2. ((+)-N-[alpha-methyl-3,4-(methylene-dioxy)phenethyl]-hydroxylamine);
N-ethyl MDA	: 1. MDE, 2. ((+)-N-ethyl-alpha-methyl-3,4-(methylene-dioxy)phenethylamine);
4-methylaminorex	: 1. ((+)-cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine), 2. ((+)-cis-2-amino-4-methyl-5-phenyl-2-oxazoline

1/ Note by the Secretariat: E/NL.1980/134; E/NL.1985/9; E/NL.1985/15; E/NL.1986/26

Article 2

To provide that this decree, which shall be inserted in the Official Gazette, shall take effect as and from the day following that of the publication of the Official Gazette in which it has been inserted.

Willemstad, July 23 1990
The aforesaid Minister,
S.H. INDERSON

Issued on August 31 1990
The Minister of General Affairs,
M.PH. LIBERIA-PETERS